

# Re-Filed “PRO Act”: Big Potential Risk for Union-Free Employers and Employees

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## Practices

Employment & Labor Law

## Article

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The “Protecting the Right to Organize Act” (“PRO Act”) proposes drastic changes to the nation’s laws governing employer-union relations, especially the ability of employers and employees to remain union-free. Earlier this month, the PRO Act was re-filed in the House of Representatives. If passed by the House and Senate, President Biden would likely sign it into law as part of a pro-union agenda.

The PRO Act proposes more than 20 significant changes to the National Labor Relations Act. Each change is designed to remove specific rights or defenses that have existed for many years. The following are some examples of significant changes proposed by the PRO Act:

- **Negate Right-to-Work Laws:** The majority of states have laws protecting employees against mandatory dues-paying membership in unions. The PRO Act would negate the right-to-work laws by condoning collective bargaining agreements that require employees to pay union dues and fees, even if an employee objects. Employees who refuse to pay would lose their jobs.
- **Reduce Independent Contractors:** In today’s “gig” economy, independent contractors are important, but they are not “employees” and not subject to unionization. The PRO Act would narrowly define independent contractors and increase the likelihood that these independent business persons become “employees” and subject to unionization.
- **Expand “Joint Employer” Status:** Under the current labor laws, it is possible for an employee to work for two or more employers at the same time under the “joint employment” doctrine. The PRO Act would make it easier to prove a joint employment relationship, thereby making it easier to unionize larger groups or multiple locations at once, such as fast food restaurants connected by a franchisor-franchisee relationship.

- **Limit Employer Free Speech:** During a typical union campaign, an employer can share facts, opinions, and experiences regarding unionization during formal and informal meetings with employees. The PRO Act would undercut the ability to conduct such meetings.
- **Decide Contractual Terms:** If a union prevails during a union campaign, it wins the right to engage in collective bargaining with the employer. Currently, an employer and union must bargain in good faith, but reaching an agreement is not guaranteed. That would change under the PRO Act, which would delegate final resolution of disputed proposals to a mediation panel that would set the final terms.
- **Penalize Employers and Managers:** The PRO Act would expose employers and members of the management team, who allegedly commit unfair labor practices, to monetary penalties up to \$100,000.
- **Protect Strikers and Secondary Boycotts:** Union strikes and boycotts are powerful, controversial weapons. Although employees retain the right to strike, economic strikers can be permanently replaced. That has been the law for many years, but the PRO Act would prohibit permanent replacement of economic strikers. Similarly, the PRO Act would condone the use of intermittent strikes, which are especially disruptive to employees, customers, and employers. Additionally, the PRO Act would legalize secondary boycotts, basically a means to pressure a third-party in order to negatively impact an employer with a labor dispute.
- **Restrict Arbitration Agreements:** The PRO Act would scrutinize private arbitration agreements, which are often a part of individual employment contracts, and designate class action arbitration provisions as an unfair labor practice.
- **Employer Email:** The PRO Act would mandate access to employer email systems for union organizing.

Now that the PRO Act has been re-filed, the AFL-CIO and other supporters will vigorously push for the bill's passage into law this year. Union-free employers are wise to carefully monitor the bill and to update related union-free training, policies, and procedures.